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TETUAN DENNIS NIK & WONG v. GNANARAJA M GNANASUNDRAM & ANOR

HIGH COURT MALAYA, SHAH ALAM
SHAHNAZ SULAIMAN J
[ORIGINATING SUMMONS NO: BA-17D-1-01-2021]
B 26 JUNE 2023

Abstract – *Section 128 of the Legal Profession Act 1976 allows for the taxation of a bill of costs outside the six-month limitation period if the following conditions are met: (i) the advocate is given notice of the application for taxation; (ii) the applicant proves to the satisfaction of the court that there are special circumstances that justify the taxation of the bill of costs outside the limitation period; and (iii) the order for taxation is made within one year of the delivery of the bill of costs.*

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LEGAL PROFESSION: *Legal fees – Recovery – Application by legal firm to recover agreed fees for legal services rendered by advocate to clients – Legal firm represented client and company – Whether there was agreement between parties for legal fees – Whether in form of warrant to act signed by client – Whether client bound by what he signed – Whether there was nexus between client and company – Whether legal firm correct in including company in application for recovery*

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LEGAL PROFESSION: *Taxation – Bill of costs – Application by client for order that legal firm furnished bill of costs for purposes of taxation of costs by Registrar – Taxation of bill of costs outside six-month limitation period – Whether there was notice to advocate to challenge bill of costs – Whether there existed special circumstances – Whether order for taxation made within one year of delivery of bill of costs – Legal Profession Act 1976, s. 128*

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A freezing order was issued by the Malaysian Anti-Corruption Commission ('MACC') in relation to monies in the second defendant's account ('freezing order'). The first defendant was charged with (i) three charges of cheating, an offence under s. 420 of the Penal Code ('PC') ('Arrest Case 29'); and (ii) 68 charges of money laundering amounting to RM11.4 million, and offence under s. 420 of the PC and s. 4(1) of the Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 ('AMLATFPUAA') ('Arrest Case 33'). The first defendant then appointed the plaintiff to act as his representative and/or to defend him in the above charges. The plaintiff issued the first provisional proforma to the first defendant as professional charges and/or solicitor fees, amounting to RM3,187,300. The first defendant instructed the plaintiff to file two separate applications to the Sessions Court to release monies from the frozen account in Arrest Case 29. Pursuant to the first defendant's instruction to the plaintiff, a representation was submitted to the Attorney General's Chambers. The representation was accepted and the first defendant pleaded guilty to the first

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alternative charge where he was liable for a fine of RM230,000, failing which a six months' jail term in respect of the first charge in Arrest Case 29. He was discharged from the second and third charges. On the same day, the first defendant was acquitted and discharged from all 68 charges in respect of Arrest Case 33. The plaintiff then issued the second and last proforma of RM2,120,000 being the remaining balance of the agreed legal fees. The MACC later issued a revocation order in respect of the second defendant's bank account which had a sum of RM3,173,741.75. Hence, the present applications by (i) the plaintiff to recover the agreed fees for legal services rendered by the plaintiff to the defendants ('encl. 1'); and (ii) the defendants for an order that the plaintiff furnish its bill of costs for purposes of taxation of costs by the Registrar ('encl. 39').

Held (allowing encl. 1; dismissing encl. 39):

(1) There was an agreement between parties for legal fees. There was a warrant to act signed by the first defendant. The warrant to act clearly stated that the amount to be paid to the plaintiff was RM5 million being agreed fees, SST (if any) and disbursements. The warrant to act signed by the first defendant clearly stated that the RM5 million was a non-refundable fee to the plaintiff. The proforma would be issued periodically. There was nothing confusing or unclear about the amount the first defendant had agreed to in the warrant to act. The first defendant could not now state that he was not in the right frame of mind or that he was under stress when he signed the warrant to act. The first defendant was bound by what he had signed and pursuant to the warrant to act, the first defendant was required to make payment for the fees as per the fee proforma. The warrant to act did not state the second defendant. However, from the documents adduced, there was a nexus between the first and second defendants. This could be clearly seen from the application to release monies of the second defendant filed by the first defendant. Moreover, the first defendant had averred that he was the ultimate shareholder/beneficial owner of the second defendant. There were also trust deeds to demonstrate that the shareholders in the second defendant were holding their shares on trust for the first defendant. Therefore, even though it was only the first defendant who had signed the warrant to act, the plaintiff had not erred in including the second defendant in the application in encl. 1. (paras 32-34, 37-39 & 53)

(2) Section 128 of the Legal Profession Act 1976 ('LPA') allows the taxation of a bill of costs outside the six-month limitation period if there was notice to the advocate; special circumstances proved to the satisfaction of the court; and the order for taxation must be made within one year of the delivery of the bill of costs. In order to consider the application, it had to be ascertained whether the conditions in s. 128 of the LPA had been complied with. Firstly was whether notice had been

given to the plaintiff to challenge the bill of costs. There was no notice to the plaintiff regarding the first defendant's intention to challenge the bill of costs. As this condition was not met, the next condition, namely whether there existed special circumstances, need not be considered. The application in encl. 39 did not meet the requirement for notice as provided for in s. 128 of the LPA. The application in encl. 39 must therefore fail. (paras 44 & 49-52)

Case(s) referred to:

Alcim Holding Sdn Bhd v. Tetuan Isaacs & Tan [2018] 1 LNS 2224 HC ***(refd)***
Asbir, Hira Singh & Co v. Supramaniam Pitchaimuthu & Ors [2000] 1 CLJ 7 HC ***(refd)***
Awan Timur Palm Oil Mill Resources (Perak) Sdn Bhd v. Tetuan Shahrizal & Nasir [2021] 1 LNS 71 HC ***(refd)***
Messrs Albert Ding, Lee & Partners v. Cho Chooi Mei [2020] 5 CLJ 778 HC ***(refd)***
Shankar RP Asnani v. Vestime Corporation Sdn Bhd & Anor [2011] 1 LNS 718 HC ***(refd)***
Skrine (Claiming As A Firm) v. NS Water Consortium Sdn Bhd [2021] 4 CLJ 571 HC ***(refd)***
SP Veloo & Co v. Affin Bank Bhd [2017] 1 LNS 1041 CA ***(refd)***
Tan Tek Sin & Anor v. Tetuan Nora Hayati & Associates [2015] 1 CLJ 89 CA ***(refd)***
Templer Park Golf & Resort Bhd & Anor v. Tetuan George Varughese [2010] 8 CLJ 754 HC ***(refd)***
Tetuan Azim, Tunku Farik & Wong v. Tetuan Ong Partnership [2021] 10 CLJ 258 CA ***(refd)***
Tetuan Putra Gill v. Hijaz Refinery (Pahang) Sdn Bhd & Anor [2009] 7 CLJ 495 HC ***(refd)***

Legislation referred to:

Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001, s. 4(1)
Criminal Procedure Code, s. 51A
Legal Profession Act 1976, ss. 116, 118, 124, 125, 128
Penal Code, s. 420
Rules of Court 2012, O. 59 r. 17

For the applicant - Emily Wong Li Yan; M/s Ezmeel & Co
For the respondents - JR Ravendran JC Ramaly; M/s RS Seelan, Parames & Co

Reported by Najib Tamby

JUDGMENT

Shahnaz Sulaiman J:

[1] There are two applications before this court. In encl. 1 (originating summons dated 22 January 2021), the plaintiff seeks to recover the agreed fees for legal services rendered by the plaintiff to the defendants.

[2] Enclosure 39 is filed by the defendants for an order that the plaintiff furnish its bill of costs for purposes of taxation of costs by the Registrar pursuant to the Rules of Court.

[3] In relation to encl. 1, the reliefs sought by the plaintiff are:

(i) that leave of the court be granted for the plaintiff to commence this action in respect of the plaintiff's bill of cost (fee proforma) dated 23 December 2020 for the sum of RM2,120,000 pursuant to ss. 124 and/or 125 of the Legal Profession Act 1976;

(ii) that the first and/or second defendant pay to the plaintiff the sum of RM5,307,300 being the outstanding legal fees for professional services rendered to the first and/or second defendant;

(iii) that the first and/or second defendant pay to the plaintiff interest at the rate of 5% per annum to be calculated on the sum of RM5,307,300 from 23 December 2020 until the date of its full and final settlement;

(iv) a declaration that the first defendant is the alter ego of the second defendant and had the second defendant's authority to engage the plaintiff to act on behalf of the second defendant; and

(v) that costs of this action to be borne by the first and/or second defendant on an indemnity basis.

Factual Background

[4] The facts of this case as gleaned from the documents filed by the parties are as follows. On 23 January 2018, a freezing order was issued by the Malaysian Anti-Corruption Commission ("MACC") in relation to monies in the account of the second defendant ("the freezing order") held in its bank account no: 8008599783 retained with CIMB Bank Berhad ("the said account").

[5] On 3 April 2019, the first defendant was charged under s. 420 of the Penal Code for allegedly cheating Consortium Zenith Construction Sdn Bhd's executive director, Zarul Ahmad Mohd Zulkifli, of RM19 million between July and August 2017. The first defendant pleaded not guilty to the three charges of cheating.

[6] On 8 April 2019, the first defendant was charged with 68 charges of money laundering amounting to RM11.4 million under s. 420 of the Penal Code and s. 4(1) of the Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 ("AMLATFPUAA"). The first defendant claimed trial to the 68 charges.

[7] The first defendant had appointed the plaintiff to act as his represent and/or defend him in the matters above, particulars of which are as follows:

(i) Arrest No. 62R-33-04-2019 – *PP v. Gnanaraja M Gnanasundram* ("the AMLATFPUAA charges/Arrest Case 33"); and

(ii) Arrest No. 62R-29-04-2019 – *PP v. Gnanaraja M Gnanasundram* ("the cheating charges/Arrest Case 29").

[8] The plaintiff has issued the first provisional proforma dated 3 February 2020 to the first defendant as professional charges and/or solicitor fees amounting to RM3,187,300. The first defendant instructed the plaintiff to file two separate applications to the Sessions Court to release monies from the frozen bank account in Arrest Case 29.

[9] On 4 August 2020 pursuant to the first defendant's instruction to the plaintiff, a representation was submitted to the Attorney General's Chambers of Malaysia.

[10] On 23 December 2020, the representation submitted by the plaintiff on behalf of the first defendant was accepted and the first defendant pleaded guilty to the first alternative charge whereby the first defendant is liable for a fine of RM230,000 failing which a six months jail term in respect of the first charge in Arrest Case 29. He was discharged from the second and third charges.

[11] On the same day, the first defendant was acquitted and discharged from all 68 charges in respect of Arrest Case 33. The plaintiff issued the second and last proforma of RM2,120,000 being the remaining balance of agreed legal fees pursuant to the warrant to act dated 17 January 2020.

[12] On 5 January 2021, MACC issued a "revocation order" in respect of the second defendant's bank account ("the bank account"). As at 6 January 2021, there was a sum of RM3,173,741.75 in the bank account.

Analysis

Enclosure 1 – Recovery Of Agreed Fees

[13] The plaintiff argued that the plaintiff was entitled to the recovery of the agreed fees by way of the fee agreement pursuant to ss. 116 and 118 of the Legal Profession Act 1976. See: *Asbir, Hira Singh & Co v. Supramaniam Pitchaimuthu & Ors* [2000] 1 CLJ 7.

[14] Sections 116 and 118 of the Legal Profession Act 1976 provides as reproduced below:

> Advocate and solicitor may enter agreement for costing contentious business
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> 116(1) Subject to any written law, an advocate and solicitor may make an agreement in writing with his client respecting the amount and manner of payment for the whole or any part of his costs in respect of contentious business done or to be done by such advocate and solicitor, either by a gross sum, or otherwise, and either at the same rate or at a greater or lesser rate than the rate at which he would otherwise be entitled to be remunerated.
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> (2) Every such agreement shall be signed by the client and shall be subject to this Part.

Enforcement of agreements

118(1) No action or suit shall be brought or instituted upon any agreement as is referred to in section 116, but every question respecting the validity or effect of any such agreement may be examined and determined, and the agreement may be enforced, varied or set aside by suit or action by summons, motion or petition by any person or the representatives of any person being a party to such agreement, or being alleged to be liable to pay, or being or claiming to be entitled to be paid the costs, fees, charges or disbursements in respect of which the agreement is made, by the Court in which the business or any part thereof was done, or a Judge of the Court, or, if the business was not done in any Court, then by the High Court or a Judge of the High Court.

(2) Upon any such summons, motion or petition, if it appears to the Court or a Judge that such agreement is in all respects fair and reasonable between the parties, the agreement may be enforced by the Court or a Judge by rule or order, in the manner and subject to the conditions, if any, as to the costs of the summons, motion or petition as the Court or the Judge thinks fair and reasonable.

(3) If the substantive terms of any agreement are deemed by the Court or the Judge to be unfair or unreasonable, the agreement may be declared void, and the Court or Judge may thereupon order the agreement to be given up for cancellation, and may direct the cost, fees, charges and disbursements incurred or chargeable in respect of the matters included therein to be taxed, in the same manner and according to the same rules as if the agreement has not been made:

Provided that the Court or Judge may amend or ratify the agreement where not all the substance of the agreement is unfair or unreasonable.

(4) The Court or the Judge may also make such order as to the costs relating to the summons, motion or petition and the proceedings thereon as to the Court or the Judge seems fair and reasonable.

(5) When the amount agreed under such agreement has been paid by or on behalf of the client or by any person chargeable with or entitled to pay the same, any Court or a Judge having jurisdiction to examine and enforce the agreement may, on application by the person who has paid the amount within twelve months after payment and, if it appears to the Court or Judge that the special circumstances of the case require the agreement to be reopened, reopen the agreement and order the costs, fees, charges and disbursements to be taxed, and the whole or any portion of the amount received by the advocate and solicitor to be repaid by him, on such terms and conditions as to the Court or Judge seems fair and reasonable.

(6) Where any agreement is made by the client in the capacity of guardian or of trustee under a deed or will, or of committee of any person or persons whose estate or property will be chargeable with the amount payable under the agreement or with any part of the amount, the agreement shall before such payment be laid before the Registrar for his

examination and the Registrar may disallow any part thereof, or may require the direction of the Court or a Judge to be taken thereon by summons, motion or petition.

(7) If in any such case:

(a) the client pays the whole or any part of the amount payable under the agreement without the previous approval of the Registrar or the Court or the Judge, he shall be liable at any time to account to the person whose estate or property is charged with the amount paid, or with any part thereof, for the amount so charged; and

(b) the advocate and solicitor accepts payment without such approval, any court which would have had jurisdiction to enforce the agreement may, if it thinks fair and reasonable, order him to refund the amount so received by him under the agreement or any part thereof.

[15] It was further submitted that the first defendant did not reject or dispute both bills of cost. See: *Tetuan Putra Gill v. Hijaz Refinery (Pahang) Sdn Bhd & Anor* [2009] 7 CLJ 495.

[16] It was contended by the plaintiff that there was an agreement between the plaintiff and the second defendant. The first defendant argued that he was not furnished with a copy of the warrant to act, despite admitting to signing of the warrant to act. The plaintiff submitted that the signing of the warrant to act is in itself an act of agreement by the defendants towards the legal fees of the plaintiff.

[17] Reference was made to the O. 59 r. 17 of the Rules of Court 2012 which provides:

Costs payable to a solicitor by his own client (O. 59 r. 17)

17(1) This Rule is in amplification and not in derogation of the procedure set out in the Legal Profession Act 1976.

(2) On the determination of a solicitor's bill to his own client (except a bill with respect to non-contentious business and a bill payable pursuant s. 5 of the Legal Aid Act 1971), all costs shall be allowed except in so far as they are of an unreasonable amount or have been unreasonably incurred.

(3) For the purpose of paragraph (1), all costs incurred with the express or implied approval of the client shall be conclusively presumed to have been reasonably incurred and, where the amount thereof has been expressly or impliedly approved by the client, to have been reasonable in amount.

(4) In paragraph (3), references to the client shall be construed

(a) if the client at the material time a mentally disordered person within the meaning of the Mental Health Act 2001 and was represented by a person acting as litigation representative, as references to that person acting, where necessary, with the authority of the Court; and

(b) if the client was at the material time a minor and represented by a person acting as litigation representative, as references to that person.

[18] See: *Skrine (Claiming As A Firm) v. NS Water Consortium Sdn Bhd* [2021] 4 CLJ 571; *Messrs Albert Ding, Lee & Partners v. Cho Chooi Mei* [2020] 5 CLJ 778; [2020] 10 MLJ 180; *Shankar RP Asnani v. Vestime Corporation Sdn Bhd & Anor* [2011] 1 LNS 718; [2012] 7 MLJ 198.

[19] The plaintiff made further reference to s. 124 of the Legal Profession Act 1976 which provides:

> No advocate and solicitor to sue for costs until delivery of bill of cost
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> (1) Except as authorized by this Act, no advocate and solicitor shall without the leave of the court commence or maintain any action for the recovery of any costs due for any business done by him until the expiration of one month after he has delivered to the party to be charged therewith, or sent by post to, or left with him at, his office or place of business, dwelling house or last known place of abode, a bill of costs, which bill shall be signed either by the advocate and solicitor, or in the case of a partnership, by any of the partners, either with his own name or with the name or style of the partnership, or by another advocate and solicitor employed by the first-named advocate and solicitor or the partnership, or be enclosed in or accompanied by a letter, signed in the like manner, referring to the bill.
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> (2) Where a bill is proved to have been delivered in compliance with subsection (1) it shall not be necessary in the first instance for the advocate and solicitor to prove the contents of the bill and it shall be presumed until the contrary is shown to be a bill *bona fide* complying with this Act.

[20] Pertaining to s. 124 of the Legal Profession Act 1976, in the case of *Templer Park Golf & Resort Bhd & Anor v. Tetuan George Varughese* [2010] 8 CLJ 754, the court held that:

> The defendant's claim stood in law to be *bona fide* and the plaintiffs' claim that the sum claimed was *bona fide* disputed was not supported with contemporary objections against the bills and the line of arguments raised by the plaintiffs militated against the relevant provisions of LPA 1976. And in consequence, the plaintiffs' application must be dismissed with direction as they had stated that they were in a position to settle the bills.

[21] The defendants submitted that the agreed fees can be challenged and if the court finds the agreement to be unfair and unreasonable, the court may direct the cost, fees, charges and disbursements incurred or chargeable to be taxed. In this regard, it was argued that the plaintiff had misconstrued the defendants' intention which was to challenge the reasonableness of the bill of costs, taking into consideration the amount of work done.

[22] The defendants argued that based on s. 118 of the Legal Profession Act 1976, this court is clothed with discretionary power to ratify and enforce an agreement where in all respects is fair and reasonable between parties. In the circumstance the court finds otherwise, this court may declare the agreement void, cancel it and direct that costs, fees, charges and disbursement be taxed.

[23] The facts before this court disclose that there was a warrant to act dated 17 January 2020 by the first defendant made in favour of the plaintiff (exh. P3, affidavit in support of Wong Rhen Yen encl. 4). The warrant to act signed by the first defendant stated that the plaintiff was appointed to act as the advocates and solicitors in relation to two cases one in the Shah Alam Sessions Court, namely (Criminal) BA-62R-29-04-2019 and one in the Kuala Lumpur Sessions Court (Criminal) WA-62R-17-04-2019. The plaintiff was required to do all things as may be reasonable and/or necessary and/or required in connection with the two cases at the Sessions Courts.

[24] The warrant to act stated the plaintiff would be entitled to RM5,000,000 as non-refundable agreed fees, SST (if any) and disbursements as per agreed fees for which proforma will be issued periodically and an invoice shall be issued on the date of receipt of payment.

[25] On 3 February 2020, a proforma was issued by the plaintiff to the first defendant amounting to RM3,187,300.

[26] The first defendant contended that his previous solicitor, Encik Aqeeb from Tetuan Aqeeb & Co had handled and defended the first defendant at the Sessions Court in Shah Alam. A total of 18 witnesses had given evidence and Encik Aqeeb had cross-examined these 18 witnesses.

[27] Nonetheless, in the middle of the case, the first defendant had appointed the plaintiff *vide* a warrant to act dated 17 January 2020. This fact is not disputed by the first defendant. However, the first defendant argued that the warrant to act was for the first defendant and not the second defendant as the charges in the Sessions Courts were against the first defendant only and not the second defendant.

[28] The first defendant further contended that he had never received the proforma issued dated 3 February 2020. In the event the first defendant had received the said proforma, the first defendant would have objected to the amount of RM3,187,300 which the first defendant deemed exorbitant and unreasonable.

[29] The first defendant further objected to the counsel fee when according to the first defendant no senior counsel attended to his case at the Sessions Court. Moreover, the first defendant stated that the fee included appeals at the High Court and Court of Appeal which did not happen.

[30] The first defendant further averred that the plaintiff attended court twice only, once to introduce themselves as the new solicitors and to obtain a new trial date as counsel was engaged with the 1 MDB case. The second time the plaintiff attended court according to the first defendant was when the alternative charges under the Companies Act 2016 were read out and the first defendant pleaded guilty and was fined RM230,000.

[31] Once the plea of guilty was entered by the first defendant, the Deputy Public Prosecutor sought to drop the 68 charges against the first defendant after the first defendant became a prosecution witness.

[32] The fact in this case is that there is a warrant to act signed by the first defendant. The warrant to act clearly states that the amount to be paid to the plaintiff is RM5,000,000 being agreed fees, SST (if any) and disbursements. The proforma will be issued periodically. In the view of this court, there is nothing confusing or unclear about the amount the first defendant had agreed to in the warrant to act. The first defendant, in the considered view of this court, cannot now state that he was not in the right frame of mind or that he was under stress when he signed the warrant to act.

[33] The warrant to act signed by the first defendant clearly stated that RM5,000,000 was a non-refundable fees to the plaintiff. The first defendant had clearly signed the warrant to act agreeing to pay the plaintiff their fees. In the considered view of this court, the first defendant was bound by what he had signed. The warrant to act led to the issuance of fee proforma dated 3 February 2020 for RM3,187,300 and a fee proforma dated 23 December 2020 amounting to RM2,120,000. This court is satisfied that pursuant to the warrant to act, the first defendant is required to make payment for fees as per the fee proforma dated 3 February 2020 and 23 December 2020.

[34] With regard to the second defendant, the warrant to act did not state the second defendant. The warrant to act was signed by the first defendant. According to the plaintiff, the first defendant had communicated to the plaintiff that the warrant to act included the authority to act for the second defendant. Pursuant to the warrant to act, the plaintiff was of the view that the plaintiff is entitled to render the first defendant and second defendant an interim bill of costs for work done for both defendants.

[35] Exhibit P5 of encl. 4 is an application by the first defendant for release of monies. In exh. P5, the first defendant had averred that while he is not a director or does not hold any shares in the second defendant, the first defendant is the ultimate shareholder/beneficial owner of the second defendant. Encik Mohd Rezal bin Jantan and Puan Aminah binti Madian are the first defendant's nominees. The first defendant further averred that he had access and control over the accounts as he is the sole signatory by virtue of a directors' resolution dated 22 May 2017 and 6 July 2017.

[36] The first defendant then went on to state that the trust deeds show that the shareholders in the second defendant were holding their shares on trust for the first defendant. This trust deed is marked as exh. P9 in encl. 4.

[37] From the documents before this court, this court is satisfied there is a nexus between the first defendant and the second defendant. This can be clearly seen from the application to release monies of the second defendant filed by the first defendant. Moreover, the first defendant had averred that he was the ultimate shareholder/beneficial owner of the second defendant.

[38] There is also trust deeds to demonstrate that the shareholders in the second defendant were holding their shares on trust for the first defendant.

[39] Hence, even though only the first defendant that had signed the warrant to act, this court is satisfied that the plaintiff has not erred to include the second defendant in this application.

Enclosure 39 – Defendant's Extension Of Time For Taxation

[40] The defendants in encl. 39 sought the following reliefs:

> (i) Bahawa Defendan-Defendan diberikan kebenaran untuk satu perlanjutan masa di bawah Aturan 3 Kaedah 5 Kaedah-Kaedah Mahkamah 2012 untuk memohon satu perintah daripada Mahkamah yang Mulia supaya proforma atau bil kos-bil kos yang dikeluarkan oleh plaintif pada 03.02.2020 dan 23.12.2020 masing-masing ditaksirkan oleh Mahkamah yang Mulia ini; dan
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> (ii) Bahawa mengikut kuasa sedia ada Mahkamah, satu perintah mengarahkan plaintif menyediakan bil kos mengikut Kaedah-Kaedah Mahkamah 2012 di dalam tindakan ini bagi tujuan penaksiran oleh pegawai penaksiran selaras dengan peruntukan Kaedah-Kaedah Mahkamah 2012.

[41] In support of the application in encl. 39, the defendants urged this court to use its inherent jurisdiction to extend the time to allow the bill of costs to be taxed after the expiry of six months from the date of delivery of the bills. It was submitted that a special circumstance which would allow this court to invoke its inherent jurisdiction to allow the extension of time for the bill of costs to be taxed is that the bill of costs had not been itemised in detail. (See*: Tan Tek Sin & Anor v. Tetuan Nora Hayati & Associates* [2015] 1 CLJ 89; [2015] 2 MLJ 1).

[42] What this entails is this court could invoke its inherent jurisdiction to grant the extension of time for the taxation of the bill of costs if this court is satisfied there are special circumstances. Special circumstances according to the defendants are when the bills of costs are not itemised in detail.

[43] Pertaining to the taxation of a bill of costs outside the six months period, this court alluded to s. 128 of the Legal Profession Act 1976 ("LPA") which provides:

(1) After the expiration of six months from the delivery of a bill of costs, or after payment of the bill of costs, no order shall be made for taxation of a solicitor's bill of costs, except upon notice to the advocates and solicitors and under special circumstances to be proved to the satisfaction of the Court.

(2) No such order for taxation shall in any event be made after the expiry of one year from the delivery of the bill of costs.

[44] Section 128 of the LPA allows the taxation of a bill of costs outside the six-month limitation period if there was notice to the advocate; special circumstances proved to the satisfaction of the court; and that the order for taxation must be made within one year of the delivery of the bill of costs. (See: *Tetuan Azim, Tunku Farik & Wong v. Tetuan Ong Partnership* [2021] 10 CLJ 258; [2021] 6 MLJ 464).

[45] This court has perused the bill of costs or proforma issued by the plaintiff dated 3 February 2020. The proforma states plaintiff had perused and reviewed the documents provided to the plaintiff under s. 51A of the Criminal Procedure Code including 80 documents/exhibits listed in Appendix A. The proforma further states that the plaintiff had perused and reviewed the witness statements of 18 witnesses. The names of the witnesses were detailed in the proforma.

[46] The proforma further stated that there were charges for legal advice to the plaintiff pertaining and/or in relation to the matters in the proforma. The fees charged when towards the professional charges for court attendance and the filing of necessary applications and affidavits and all incidentals relating to the matter.

[47] In the case of *SP Veloo & Co v. Affin Bank Bhd* [2017] 1 LNS 1041, the Court of Appeal stated the following:

[11] It must be noted that a solicitor's bill can be a gross bill or detailed bill. A detailed bill mentioned in section 121(1) of LPA 1976 has nothing to do with a bill of costs for purpose of taxation under RHC 1980 or RC 2012. Courts in their decisions have often created confusion by asserting a detailed bill must be in the form of bill of taxation as set out in RHC 1980 and that too when dealing with section 121 of LPA where RHC 1980 or RC 2012 does not come into operation at all. Section 121 is independent of section 132 of LPA 1976. RHC 1980 or RC 2012 only comes into operation when it relates section 132 of LPA.

[12] There is also a difference in phrase in the use of bill of costs in section 121 and section 128. Section 121(1) refers to solicitor's bill of costs. Section 128 refers to an order for taxation of costs. The distinction is not one of an apple and an orange but one of a marble and pumpkin. This distinction is further emphasised by section 126(1) which states 'an order for taxation of bill of costs'. The bill referred to here is the bill presented by the solicitor under section 121 and not the bill of costs related to

taxation mentioned in RHC 1980 or RC 2012. Even section 130 refers to delivery of solicitor's bill of costs and that bill can be a subject matter of taxation of bill of costs. If the court orders taxation of solicitor's bill of costs, the taxation of the bill must follow the procedure set out for taxation of bill of costs under RHC 1980 and now under RC 2012.

…

[16] Section 121 clearly talks about a solicitor's bill of costs. It has nothing to do with "taxation of bill of costs". Solicitor's bill is a bill for services rendered by the solicitor. The bill can set out detailed items or for gross sum. This bill and the manner it is prepared is at the option of the solicitor. There is no provision in law for the court to dictate how the solicitor's bill should be. Cases which have not made out the distinction must be corrected by due process of law. In addition, section 121(1) proviso (c) itself makes it clear if the matter is referred to taxation the solicitor must issue a bill as required by the taxing officer. Section 121(1) proviso (a) gives the client the right to demand from the solicitor a bill containing detailed item if the solicitor has served a gross bill. This request is only for the client to be informed of, of the breakdown of the gross bill and not a bill for taxation. A bill for purpose of taxation can only come after the court has ordered the matter to be referred to taxation. Section 121(1) proviso (b) also makes it clear even if a gross bill is submitted an order can be obtained for it to be taxed.

…

[20] Section 128 must be read together with sections 121 and 126 for purpose of clarity. The law gives a right to a client to get the solicitor's bill of costs taxed. The application must be made within six months and that can be done as of right. However, the application can also be made after the 6th month and within a year upon special circumstances been proved to the satisfaction of the court. The threshold test here is very high.

[21] What is important to note is that if section 128 timeline is not adhered to by the client, he will not have the privilege to get the solicitor's bill of costs to be taxed through the court process. What will be left to address his grievance will only be related to a common law right to dispute the claim. It is very unlikely for the courts to entertain a complaint on the solicitor's bill of costs when the statutory mechanism was not adhered. Only in very rare and exceptional circumstances will the court want to reopen the issue of bill of costs.

[48] See also: *Templer Park Golf & Resort Bhd & Anor v. Tetuan George Varughese* [2010] 8 CLJ 754; *Alcim Holding Sdn Bhd v. Tetuan Isaacs & Tan* [2018] 1 LNS 2224 and *Awan Timur Palm Oil Mill Resources (Perak) Sdn Bhd v. Tetuan Shahrizal & Nasir* [2021] 1 LNS 71.

[49] In order to consider the application in encl. 39, this court had to ascertain that the conditions in s. 128 of the LPA had been complied with. Firstly, is whether notice had been given to the plaintiff to challenge the bills of costs.

[50] This court is satisfied there was no notice to the plaintiff regarding the first defendant's intention to challenge the bills of costs. As this condition is not met, this court need not consider the next condition namely whether there exist special circumstances.

[51] In brief, this application in encl. 39 did not meet the requirement for notice as provided for in s. 128 of the LPA. (See also *Tetuan Azmi, Tunku Farik & Wong* (*supra*)).

[52] This application must therefore fail as no notice to the plaintiff was given and hence the requirement of s. 128 of the LPA had not been fulfilled.

Conclusion

[53] In the upshot, this court is satisfied that there was an agreement between parties for the legal fees. This is evident by virtue of the warrant to act dated 17 January 2020 signed by the first defendant. This court is further satisfied that there is a nexus between the first defendant and the second defendant. This is clear from exh. P5 and P9 of encl. 4.

[54] This court therefore allows this application by the plaintiff. Costs of RM7,500 to be paid to the plaintiff subject to allocatur.